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Bylaws of Guadalupe Valley Electric Cooperative, Inc.

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The background image shows two men in red polo shirts and red baseball caps with the 'gvec' logo. They are standing in front of a building under construction, with wooden framing and a blue level visible. The man on the left has a beard and is wearing sunglasses. The man on the right is also wearing sunglasses. Both have their hands in their pockets. The text 'Bylaws' is centered over the image in a large, bold, black font.

Bylaws

(Amended November 22, 2022)

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BYLAWS OF GUADALUPE VALLEY ELECTRIC COOPERATIVE, INC.

ARTICLE I (MEMBERS)

Section 1. Requirements for Membership

Any natural person, corporation, limited liability company, partnership, limited partnership, organization, trust, estate, association or any other legal entity of any kind, or any government or governmental authority or entity of any kind ("Person") with the capacity to enter into legally binding contracts shall be eligible to become a member in the Guadalupe Valley Electric Cooperative, Inc. (hereinafter the "Cooperative") by:

- (a) making a written application for membership therein (if required);
- (b) consuming or agreeing to consume, receive, purchase, or otherwise use electric energy and/or services for the purchase, distribution, delivery, or metering of electric energy (hereinafter referred to as "electric energy and/or services" or collectively as "electric service");
- (c) agreeing to comply with and be bound by the Certificate of Formation (and any amendments thereto) of the Cooperative ("Certificate of Formation") and these Bylaws (as amended from time to time ["Bylaws"]) and any other Governing Documents [defined below] as may from time to time be adopted by the Board of Directors of the Cooperative [the "Board of Directors" or "Board"];
- (d) satisfying the requirements for membership in the Cooperative under Applicable Law and the Governing Documents (defined in Article I, Section 5); and
- (e) paying the membership fee, together with any Additional Fees (defined below).

No Person may own more than one (1) membership in the Cooperative regardless of the number of delivery points at which it receives delivery of electric energy.

The term "Member" as used in these Bylaws shall be deemed to include natural persons that are legally married or otherwise joined in a legally recognized marriage relationship holding a Joint Membership and any provisions relating to the rights and liabilities of membership shall apply equally with respect to the holders of a Joint Membership.

Section 2. Membership Fee

- (a) The membership fee shall be fixed from time to time by the Board.

- (b) The membership fee, together with any Additional Fees or any combination thereof, if required by the Cooperative, shall entitle the Member to one service connection. A service connection deposit or fee, in such amount as shall be prescribed by the Cooperative, together with any service security deposit, service connection deposit or fee, facilities extension deposit, and/or contribution in aid of construction that may be required by the Cooperative or any combination thereof (collectively, "Additional Fees"), if required by the Cooperative, shall be paid by the Member for each additional service connection requested by the applicant or Member. Cooperative shall have the right to apply such deposit to any Member accounts.
- (c) Upon termination of service with the Cooperative the Member shall keep the Cooperative informed of a current mailing address in order that the Cooperative may refund any remaining balance of the membership fee and Deposit which exists after payment of all final bills.

Section 3. Purchase of Electric Energy and/or Services

Each Member shall, as soon as electric energy shall be available, purchase from the Cooperative all electric energy purchased for use on the premises specified in the Member's account, and shall pay therefore at rates which shall from time to time be fixed by the Board; provided, however, that the electric energy and/or services which the Cooperative shall furnish to any Member under this Section 3 may be limited to such types as the Board shall from time to time determine. It is expressly understood that amounts paid for electric energy in excess of the cost of service are furnished by Members as capital and each Member shall be credited with the capital so furnished as provided in these Bylaws. Each Member shall pay to the Cooperative such minimum amount as shall be fixed by the Board, from time to time, regardless of the amount of electric energy and/or services consumed. Each Member shall also pay all obligations which may from time to time become due and payable by such Members to the Cooperative as and when the same shall become due and payable.

Section 4. Non-Liability for Debts of the Cooperative

The private property of the Members of the Cooperative shall be exempt from execution or other liability for the debts of the Cooperative and no Member shall be individually liable or responsible for any debts or liabilities of the Cooperative.

Section 5. Indemnification

As determined by the Board and to the extent allowed by applicable law, including Chapter 8 of the Texas Business Organizations Code as it may be amended from time to time:

- (a) As requested by the Cooperative, a Member shall indemnify the Cooperative for, and hold the Cooperative harmless from, any expenses, costs, liabilities,

or damages, including reasonable attorneys' fees and legal expenses incurred by the Cooperative, or by any Cooperative Director, officer, employee, agent, representative, or contractor, related to any property damage, personal injury, or death directly or indirectly caused by the Member's negligence, gross negligence or willful misconduct, by the unsafe or defective conditions of a location occupied by the Member, or by the Member's failure to comply with the Governing Documents. The "Governing Documents" are the written or Electronic membership application (if any) submitted by an applicant or Member and the following documents and actions, all as currently existing or as later adopted or amended:

- (i) all applicable local, state, and federal constitutions, statutes, ordinances, regulations, holdings, rulings, orders, and similar documents or actions, whether legislative, executive, or judicial ("Applicable Laws"), regarding or affecting the Cooperative's property, property rights, and assets, the Cooperative's operation, the Cooperative's Members and Patrons, the provision and use of electric service, Cooperative equipment, and Member equipment connected to Cooperative equipment;
- (ii) the Certificate of Formation;
- (iii) these Bylaws;
- (iv) the Cooperative's service rules and regulations;
- (v) the Cooperative's rate or price schedules; and
- (vi) all rules, regulations, requirements, guidelines, procedures, policies, programs, determinations, resolutions, or actions taken, adopted, promulgated, or approved by the Board.

Article IX of these Bylaws ("Electronic Documents and Actions") defines "Electronic" and similar terms.

- (b) The Cooperative shall indemnify, defend and hold harmless Directors and officers, including the General Manager of the Cooperative ("Cooperative Officials") from and against all costs, expenses and liabilities, including counsel fees, reasonably incurred by, or imposed upon him or her, in connection with any proceeding to which he or she may be made a party, or in which he or she may become involved, or any settlement thereof, by reason of being or having been a Cooperative Official, whether or not he or she is a Cooperative Official at the time such expenses are incurred, to the maximum extent allowed by applicable law. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Cooperative Officials may be entitled. The Cooperative may purchase and maintain insurance on behalf of any person who is or was a Cooperative Official, or who is or was serving at the request of the Cooperative as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any

such capacity, or arising out of his or her status as such, whether or not the Cooperative would have the power to indemnify him or her against such liability under the provision of this Article.

Section 6. Joint Membership

- (a) It is the policy of the Cooperative to consider natural persons that are legally married or otherwise joined in a legally recognized marriage relationship as Joint Members of the Cooperative, subject to compliance with this Section 6 (“Joint Members”) and, as such, are qualified for all the rights and are subject to all the obligations of the named Member (“Joint Membership”).
- (b) Rights and Obligations of Joint Members. For a Joint Membership:
 - (i) notice provided to one Joint Member constitutes notice to both Joint Members;
 - (ii) waiver of notice signed by one Joint Member constitutes waiver of notice for both Joint Members;
 - (iii) the presence of either or both Joint Members at a meeting constitutes the presence of one Member at the meeting and constitutes a joint waiver of notice of the meeting;
 - (iv) the vote of either separately or both jointly shall constitute one joint vote;
 - (v) withdrawal or expulsion of either shall terminate the Joint Membership; and
 - (vi) either but not both may be elected as a Member of the Board (“Director”) or elected or appointed as an officer of the Cooperative, provided that the one so elected or appointed meets the qualifications for such office.

Section 7. Conversion of Membership

- (a) Membership may be converted to a Joint Membership upon the written request of the holder thereof and the agreement by such holder and his or her spouse to comply with the Governing Documents. The changed membership status shall be indicated in the account records of the Cooperative.
- (b) Upon the death of either spouse who is a party to the Joint Membership, such membership shall be held solely by the survivor. The changed membership status shall be indicated in the account records of the Cooperative upon notice by the surviving spouse; provided, however, that the estate of the deceased shall not be released from any debts due the Cooperative.
- (c) Upon the legal separation or divorce of the members of a Joint Membership, such membership shall continue to be held solely by the one who continues directly to occupy or use the premises covered by such membership in the same manner and to the same effect as though such membership had never been joint; provided, however, that neither spouse shall be released

from any debts or obligations due the Cooperative on the date of separation or divorce, and electric service to the premises may be terminated in accordance with the rules and regulations of the Cooperative if any bills for electric service to the premises are unpaid.

Section 8. Withdrawal and Termination of Membership

- (a) Any Member may withdraw from membership upon payment in full of all debts and liabilities of such Member to the Cooperative and upon compliance with such terms and conditions as the Board may prescribe. The Board may, by the affirmative vote of not less than two-thirds (2/3) of the Directors, expel any Member who shall have violated or refused to comply with any provisions of the Governing Documents, but only if such Member shall have been given written notice by the Cooperative that such failure makes such Member subject to expulsion and, if such failure is curable, such Member does not cure such failure within ten (10) days after such notice was given. Any expelled Member may be reinstated by vote of the Board or by vote of the Members at any annual or special meeting.
- (b) The membership of a Member who, for a period of twelve (12) consecutive months during which service is available to such Member, has not purchased electric energy from the Cooperative, may be canceled, and such Member expelled, by resolution of the Board.
- (c) Upon the death, cessation of existence, expulsion or withdrawal of a Member, the membership of such Member shall thereupon terminate; provided, however, that the foregoing provisions of this Section 8(c) shall not be construed as terminating the membership of the other person in a Joint Membership with any deceased, withdrawn or expelled Member, unless the Cooperative also determines (in the case of a withdrawal or expulsion) that the membership of such other person is terminated. If the membership of the other person in a Joint Membership with the deceased, withdrawn or expelled Member is continuing and if the membership is in the name of the other person, then no action need be taken regarding that membership; but if the membership is in the name of the deceased, withdrawn or expelled Member, then the Cooperative will update the membership status to provide the name of the other person in a Joint Membership with the deceased, withdrawn or expelled Member. Termination of membership in any manner shall not release the Member or his/her estate from the debts and liabilities of such Member to the Cooperative. Upon termination of membership in any manner, the Cooperative may apply any membership fee or deposit of such former Member to any debt or liability owed to the Cooperative by such former Member.

Section 9. Transfer of Membership

Except as otherwise provided in Article I of these Bylaws with respect to Joint Memberships, Membership in the Cooperative shall not be transferable.

ARTICLE II (MEETINGS OF MEMBERS)

Section 1. Annual Meeting

Except as otherwise provided in these Bylaws, the Annual Meeting of the Members shall be held on the fourth Friday in June of each year or such other date established by resolution adopted by the Board, at such place as shall be designated by the Board and specified in the notice of the meeting for the purpose of electing Directors, passing upon reports covering the previous fiscal year and transacting such other business as properly noticed in the notice of the meeting. Failure to hold the Annual Meeting at the designated time shall not result in a forfeiture or dissolution of the Cooperative. For cause deemed adequate by the Board, to be recited in the resolution, the Annual Meeting of the Members and election of Directors may be postponed for a period not to exceed one hundred (100) days by resolution of the Board adopted at a meeting at least thirty (30) days prior to the date of the Annual Meeting; provided however, that in case of a Force Majeure Event, such Annual Meeting and election of Directors may be postponed to a date determined by the Board of Directors to be as soon as reasonably practicable after the removal of the cause. including postponement until the next Annual Meeting of the Members and the election of Directors shall be held in accordance with Article II, Section 5(e) of these Bylaws. "Force Majeure Event" includes, but is not limited to, any cause that is beyond the reasonable control of, and without the fault of, the Board of Directors, including without limitation, any intervening act of God or public enemy, war, invasion, act of terror, natural disaster, disease outbreak, epidemic, pandemic, or other declaration of public health emergency, quarantine restriction, and any action of any governmental body or authority. Any action taken in any such postponed Annual Meeting shall have the same force and effect to all intents and purposes and shall be held in the same manner and after the same notice as though such meeting were held on the date hereinabove set for such meetings.

Section 2. Special Meetings

Special meetings of the Members may be called by the President, at least a majority of the Directors, or upon a written request signed by at least ten percent (10%) of all the Members and it shall thereupon be the duty of the Secretary of the Board ("Secretary") to cause notice of such meeting to be given as hereinafter provided. The place of any special meeting shall be set by the Board.

Section 3. Notice of Members Meetings

Written, printed or Electronic notice stating the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be distributed not less than ten (10) days nor more than thirty (30) days before the date of the meeting, by or at the direction of the

Secretary, to each Member. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his/her address as it appears on the records of the Cooperative with the postage thereon prepaid. Except as otherwise provided in these Bylaws, an Electronically transmitted notice of a Member meeting is delivered when Electronically sent to a Member at the Member's Electronic mail address shown in the Cooperative's records. The failure of any Member to receive notice of an Annual or special meeting of the Members, shall not invalidate any action which may be taken by the Members at any such meeting.

Section 4. Quorum

- (a) At least one hundred fifty (150) of the Members present in person (which includes votes received by:
 - (i) regular mail ballot returned to the Cooperative or its designee,
 - (ii) Electronic mail,
 - (iii) the Cooperative's website; or
 - (iv) a website or information processing system that the Cooperative has designated or uses to send, receive, or transmit Electronic Documents or Electronic information, or to Electronically conduct an action, transaction, business, meeting or activity, or represented by proxy shall constitute a quorum for the transaction of business at all general membership meetings of the Members.

Notwithstanding the foregoing, five percent (5%) of the total number of all Members of the Cooperative (including votes received by mail, Electronic mail or by proxy) shall constitute a quorum if amendments to the Certificate of Formation are submitted to a vote of the Members. If less than a quorum is present at any meeting, a majority of those present in person or represented by proxy may adjourn the meeting from time to time without further notice. Members voting by mail or Electronically are counted as present for purposes of determining whether a quorum is present. This Section 4 shall in no way supersede, impair or affect Article XI [Disposition of Property] of these Bylaws insofar as Article XI pertains to the minimum number of Members required to be present and the minimum of affirmative votes necessary to authorize a sale of the Cooperative's property in such instances when an affirmative vote of Members is necessary to authorize such a sale.

- (b) **Quorum during Certain Force Majeure Events.** Notwithstanding any provision of these Bylaws to the contrary, if voting in person is not possible due to a Force Majeure Event, the following methods of attaining a quorum may be authorized by the Board of Directors:
 - (i) voting by mail ballot or in such other manner as determined by the Board, (including voting by hand delivery of a ballot to a location designated by the Cooperative; provided that any such additional manner of voting shall be conducted in such a way that it can be determined and confirmed that each vote was authorized and cast

by the applicable Member), and any Member casting a vote through such additional approved manners of voting shall be deemed to have cast the equivalent of a mail ballot pursuant to the Electric Cooperative Corporation Act (the "Act");

- (ii) Electronically via the Cooperative's website; or
- (iii) by means of a website or information processing system that the Cooperative has designated or uses to send, receive or transmit documents or information, or to Electronically conduct an action, transaction, business, meeting or activity).

Section 5. Voting

- (a) Each Member shall be entitled to one (1) vote and no more, regardless of the number of meters held, upon each matter submitted to a vote at a meeting of the Members. At all meetings of the Members at which a quorum is present, all questions shall be decided by a vote of a plurality of the Members voting thereon in person, by mail, Electronically or by proxy, as determined by the Board except as otherwise provided by law, the Certificate of Formation or any amendments thereto, or by these Bylaws. If spouses hold a Joint Membership, they shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the Members. Notwithstanding any provision of these Bylaws to the contrary, if only one individual is nominated to run for election for a Director position scheduled for election by Members at the meeting of Members, then the individual presiding at such meeting may announce that the nominated individual is elected by acclamation and no vote is required.
- (b) Persons casting votes for organizations (i.e., corporations, churches, associations, partnerships, trusts, or other types of associations or businesses) must have on file at the Cooperative's office, or in hand at a Member meeting an authorization executed by an authorized representative of such organization naming and authorizing the individual to vote as its authorized representative for such organization.
- (c) All estates shall be voted by the duly appointed executor, administrator, or if the membership is a Joint Membership, by the joint survivor, or any one of the three. Before any of the three shall be allowed to vote, there shall be on file with the Cooperative, or the person voting shall have in hand at a Member meeting documentation that such person is the duly appointed executor, or the administrator, or the surviving Joint Member of the deceased Member.
- (d) In addition, no Members shall be registered to vote after the point in the Annual Meeting, or Special Meeting, at which time the person conducting such meeting receives a motion and second.

- (e) **Voting during Certain Force Majeure Events.** Notwithstanding the foregoing, if an Annual Meeting of the Members is not held due to a Force Majeure Event as provided in Article II, Section 1 of these Bylaws;
 - (i) the election of Directors can be postponed until a date determined by the Board to be as soon as reasonably practicable after removal of the cause, including postponement until the next Annual Meeting of the Members; or
 - (ii) the election of Directors can be held without a meeting of the Members, in which case voting shall be conducted in accordance with Article II, Section 4B. of these Bylaws as determined by the Board.

Section 6. Proxies

- (a) At any meeting of the Members, any Member may vote by proxy by assigning such proxy to the designee or designees established by the Board, but only if such proxy;
 - (i) is registered with the Cooperative or its designee, before 5:00 p.m. on the fifth business day next preceding the date of the Member meeting or provides written confirmation of authorization at the Member meeting,
 - (ii) is executed by the Member in writing or Electronically;
 - (iii) specifies the particular meeting at which it is to be voted, and
 - (iv) is dated not more than forty-nine (49) days prior to the date of such meeting.

PROVIDED, that any mailed proxies not otherwise dated shall be deemed dated as postmarked. Accounts in the name of non-natural Members shall be voted only by proxy and shall be bound by all provisions regarding proxies as stated in this Section. The proxy shall be voted by the Board's designee or designees, in accordance with the directions designated by the Member on the Proxy Card as such is defined below. All proxies will be received, validated, counted and maintained by the General Manager or his/her designee. All proxies, which identify the Members, shall be held confidential, except as may be necessary to meet applicable legal requirements. Voted proxies shall not be seen by, nor reported to, any Director Candidate except in aggregate number or to determine if (rather than how) a Member has voted.

- (b) **Proxy Committee Recommendations for Director Elections.** The Proxy Committee of the Cooperative shall consist of its Directors whose Districts are not up for election. Following the nomination of Director Candidates as described in Article III [Directors], Section 4 of these Bylaws, the Proxy Committee shall meet to establish a recommendation regarding its preferred candidate for each Director position up for election. The recommendations shall be established by a majority vote of the Proxy Committee. In the event that the vote ends in a tie, the recommendation shall be not to take a position on the Director election.

- (c) **Proxy Recommendations for Other Agenda Items.** The Board shall meet to establish a recommendation from the Cooperative regarding other agenda items to be voted on at a Member meeting as provided in Article II, Section 9 of these Bylaws. The meeting shall be held not less than sixty (60) days prior to the Member meeting. The recommendation shall be established by a majority vote of the Directors. In the event that the vote ends in a tie, the recommendation shall be not to take a position on the "appropriate" item.
- (d) **Proxy Card.** The Proxy Card, which shall be distributed to all Members not more than forty-nine (49) days prior to the Member meeting, shall contain:
- (i) the name of the person or persons designated by the Board to vote the proxies;
 - (ii) the names of candidates for each Director election; and
 - (iii) any other "appropriate" items to be voted on at the Member meeting.

The recommendations as described in Section 6(b) and Section 6(c) of this Article shall also be included on the Proxy Card. The Member shall have the right to specify on the Proxy Card how such proxy is to be voted on issues at the meeting of the Members, including Director elections and other "appropriate" items.

In the event a Member executes two or more proxies for the same meeting, the first valid proxy received by the Cooperative or its designee shall prevail. Notwithstanding the foregoing provisions of this Section, whenever a Member is absent from a meeting but the absent Member's spouse attends such meeting, such spouse may vote if present in person, unless such Member has given a written proxy to some other person eligible to vote such proxy.

- (e) **Solicitation of Proxies.** Proxies may be solicited on behalf of the Cooperative, and the entire cost of solicitation shall be borne by the Cooperative. The Cooperative may use its officers, employees or other designee to solicit proxies from the Members either personally, by telephone, mail or Electronically.
- (f) **Record Date.** The Record Date for determining the total membership and the Members entitled to vote at a Member meeting shall be 5:00 p.m. on the fifth (5th) business day next preceding the date of the Member meeting.

Section 7. Voting by Mail or Electronically

The Board may authorize voting by mail or Electronically on any matter submitted to a vote by the Members. When such procedure is authorized by the Board, such votes shall be upon ballot forms furnished to the Member at the time notice of any Members meeting is given to the Members.

Section 8. Rules of Order

The Board may determine the rules, regulations and parliamentary procedures governing all Member meetings, Board meetings and committee meetings. If the Board does not set forth such rules, regulations and parliamentary procedures in writing, the latest edition of Robert's Rules of Order shall govern. In any case, no variation from such rules, irregularities or other procedures shall affect in any way the validity of the action taken at such meeting.

Section 9. Member Meeting Agenda

The Board of Directors shall prepare an agenda for the Annual Meeting each year. Such agenda shall be prepared at the Board of Directors meeting held not fewer than sixty (60) days prior to the date that the Annual Meeting shall be held. Any person desiring to present new business for such Annual Meeting shall submit a request, in writing, that the Board of Directors places such matter on the agenda. The request shall be Electronically submitted or submitted in writing and delivered by hand delivery or certified mail to the Board of Directors no later than the Monday preceding the date of the Board of Directors meeting at which the agenda shall be prepared. The Board of Directors shall determine whether to place a properly requested matter on the agenda. Only those matters placed on the agenda for an Annual Meeting may be submitted to a vote of the Members at such Annual Meeting.

For both Director and Member items addressed in this section, "appropriateness" shall be defined as any item which the Members have the right to determine or act upon pursuant to the Act, the Certificate of Formation or any amendments thereto, or these Bylaws. For Member submitted items, the Board will also consider in determining "appropriateness," the authorities, responsibilities and restrictions vested in, and placed on, the Board by law, contractual obligations and its fiduciary duties.

ARTICLE III (DIRECTORS)

Section 1. Voting Districts

The area served by the Cooperative shall be divided into eleven (11) Districts, to be determined and defined by the Board ("Districts"). Each District shall be represented by one (1) Director. The Districts shall be those outlined and approved periodically at a meeting of the Board and shall be maintained and readily available for review at the Cooperative's principal office. As necessary, the Board shall revise the Districts to ensure that the Districts provide equitable representation on the Board from throughout the Cooperative service area. Within a reasonable time following a District revision, and at least one hundred twenty (120) days before the next Annual Member Meeting, the Cooperative must notify, in writing or Electronically, Members affected by the District revision. District revisions are effective on the date the Board approves the District revision. The Districts shall be defined by physical landmarks, such as roads and rivers, as nearly as practicable.

If a Member's principal place of residence is served by the Cooperative, then such Member shall be entitled to vote at meetings of the District in which his/her principal residence is located.

If a Member's principal place of residence is not served by the Cooperative, then such Member shall be entitled to vote at meetings of the District in which he/she is receiving electric service from the Cooperative; and if he/she is receiving electric service from the Cooperative in more than one District, then he/she shall be entitled to vote only at the District Meetings of the District in which he/she has for the longest period of time been continuously receiving such service.

Insofar as Persons other than natural persons, are concerned, the phrase "principal place of residence" shall be construed to mean the location of the seat of any political subdivision, principal place of business, main office, or headquarters of any such Person.

In all other portions of the Bylaws in which the phrase "Member residing in the District" is used, it shall have the same meaning as "Member entitled to vote at such meeting."

Section 2. General Powers

The business and affairs of the Cooperative shall be managed by a Board of eleven (11) Directors which shall exercise all of the powers of the Cooperative except such as are by law or by the Certificate of Formation or any amendments thereto or by these Bylaws conferred upon or reserved to the Members.

Section 3. Qualifications and Tenure

- (a) Directors shall be elected on staggered three (3) year terms as follows. The initial Board shall be divided into three classes, with the Directors representing Districts 2, 5 and 8 constituting a class to be elected in 2020; Directors representing Districts 3, 6, 9 and 11 constituting a class to be elected in 2021; and Directors representing Districts 1, 4, 7 and 10 constituting a class to be elected in 2022. At the Annual Meeting of Members held each year, the successors to the Directors of the class whose terms of office shall expire at the meeting shall be elected to hold office for a term which shall expire at the third Annual Meeting of Members after the Annual Meeting at which such Directors shall have been elected, or until their successors have been duly elected, so that the term of one class of Directors shall expire in each year subject to the provisions of these Bylaws with respect to the removal of Directors.
- (b) Each Director shall represent a Director District as set by the Board in the Bylaws of the Cooperative.

- (c) If an election of Directors shall not be held on the day designated in the Bylaws for the Annual Meeting or at any adjournment thereof, the Board shall cause an election to be held at a Special Meeting of the Members within a reasonable time thereafter, provided, however, that if an election of Directors is not held due to a Force Majeure Event as provided in Article II, Section 1 of these Bylaws:
- (i) such election can be postponed to a date determined by the Board of Directors to be as soon as reasonably practicable after removal of the cause, including postponement until the next Annual Meeting of the Members; or
 - (ii) the election of Directors can be held without a meeting of the Members, in accordance with Article II, Section 4B, as determined by the Board.
- (d) Except as otherwise expressly provided herein, no Member shall be eligible to become or remain a Director of the Cooperative who:
- (i) has not been a Member in good standing in his/her individual capacity for the most recent twelve (12) months prior to becoming a candidate for Director; A Member in "good standing" means a Member who has not been disconnected for nonpayment within the most recent twelve (12) months; or
 - (ii) whose principal place of residence is not served with electric power and energy by the Cooperative in the District he/she is to represent; or
 - (iii) while a candidate for Director, while a Director and during the five years immediately before becoming a candidate for Director or a Director, has been convicted of or pled guilty to a felony or a crime involving moral turpitude; or
 - (iv) has been previously removed or disqualified as a Director;
 - (v) before becoming a Director, has not graduated from high school or earned an equivalent degree or certification;
 - (vi) except as otherwise provided by the Board for good cause, has failed to attend at least three-fourths of all Board Meetings during each twelve-month period or has failed to periodically attend certain continuing education programs for Directors;
 - (vii) has been within the most recent 5-year period or is currently, a full, part-time or seasonal employee having an employment relationship with the Cooperative; or
 - (viii) while a Director is engaged in business with, in any way employed by, materially affiliated with or financially interested in a competing enterprise or a business selling electric energy, services or supplies to the Cooperative, its affiliates or its Members, including but not limited to electric, broadband, distributed energy resources, electrician services and AC/heating products and services; or
 - (ix) is the incumbent of or a candidate for an elected public office of the United States of America, the State of Texas, or a county or

municipality of the State of Texas, regardless of any compensation or reimbursement, except that an incumbent of or a candidate for public office of a political subdivision of the State of Texas other than a county or municipality is eligible to become or remain a Director of the Cooperative; or

- (x) is a Close Relative (defined below) of an incumbent Director or Cooperative employee.

- (e) As used in these Bylaws, "Close Relative" means a person who is related within the first degree or second degree by blood, adoption or marriage (including common law), or family-in-law. First degree, second degree, and family-in-law relatives are defined as a spouse, mother, father, mother-in-law, father-in-law, grandfather, grandmother, grandchild, son, daughter, son-in-law, daughter-in-law, brother, sister, and step relatives to the same degree aforementioned.

In cases in which the relationship with the prohibited degree between an employee and a Director arises after the inception of employment, a majority approval of the Board of Directors, exclusive of the related Director, shall be required for continuation of employment of such employee and continued service of such related Director.

- (f) In cases in which any Director was qualified to be elected in accordance with this Section 3 at the time of such election but becomes subject to disqualification pursuant to Section 3(d)(viii) above, a majority approval of the Board of Directors, exclusive of the interested Director, shall be required for continued service of such related Director.

- (g) The fact that any Director was not qualified to be elected in accordance with, or (after election) becomes subject to any of the disqualifications described in the preceding provisions of this Section 4.6 shall not affect in any manner whatsoever the validity of any action taken at any meeting of the Board.

Section 4. Director Disqualification

Only individuals complying with or meeting the Director Qualifications provided in Section 3 above may become or remain a Director. After being elected, designated or appointed, if any Director fails to comply with or meet any Director Qualification, unless otherwise determined by the Board of Directors for good cause, the Board of Directors shall disqualify the Director and the individual is no longer a Director, provided that:

- (a) The Board of Directors notifies the Director in writing of the basis for, and provides the Director an opportunity to comment regarding, the Board's proposed disqualification; and

- (b) Within thirty (30) days after the Board of Directors notifies the Director of the proposed disqualification, the Director neither complies with nor meets the Director Qualifications.

Section 5. Nomination of Directors

Names may be placed in nomination for Director by (1) receiving a majority vote of the Members present at a District Meeting, (2) submission of a Member petition, or (3) being nominated by the Nominating Committee. The following procedures shall apply:

- (a) **District Meeting Nominee.** Not less than ninety (90) days nor more than one hundred twenty (120) days before any meeting at which Directors are to be elected, the Board shall conduct a separate meeting of the Members of each District for which Directors are to be elected. The meeting shall be held at a suitable place to be designated by the Board for the purpose of selecting one (1) individual to be placed in nomination as a Director Candidate. The notice of such meeting shall be delivered to each Member located in such District as provided in Section 3 of this Article and shall indicate the District to which the Member belongs. The notice shall state that an election for nominating an individual as a Director Candidate for that District will take place at the meeting. The meeting shall, however, be open for discussion of any other matters pertaining to the business of the Cooperative, regardless of whether or not such matters were listed in the notice of the meeting, and recommendations with respect thereto may be submitted to the Board for its consideration.

Fifteen (15) Members entitled to vote in the District, present at such duly called District Meeting shall constitute a quorum. If a quorum is not present, and thus no business may be officially conducted, the Nominating Committee shall name a Director Candidate to be placed in nomination.

The District Meeting shall be called to order by the Director representing the District or by another designated representative of the Board, or in his/her absence, by any other Member entitled to vote within the District. The Members shall proceed to elect a chairman, who shall be someone other than the Director, and who shall appoint a secretary to act for the duration of the meeting. Members of other Districts present at the meeting may be heard but shall have no vote. Nominations for candidates for Director shall be made from the floor at the meeting, and any Member entitled to vote in the District shall have the right to nominate one (1) candidate. The chairman shall call for nominations for Director Candidates. The period to make nominations shall remain open for a reasonable amount of time. Candidates must be Members entitled to vote in the District, must possess the qualifications for Director as specified in Article III [Directors], Section 3 of these Bylaws and must be present in person at the meeting in order to formally accept the nomination.

In order to vote at a District Meeting, individuals representing non-natural Members must present an authorization executed by an authorized representative of the non-natural Member.

Voting shall be by ballot unless only one (1) candidate is nominated, in which event voting may be by show of hands or voice vote without balloting, and the individual presiding at such meeting may announce that the nominated individual shall be the Nominated Director Candidate for such District. If more than one (1) person is nominated, then the person receiving a majority of the votes cast shall be the Nominated Director Candidate for such District. If more than two (2) persons are nominated and no one person receives a majority of the votes cast, then the two (2) persons receiving the highest number of votes shall participate in a second (run-off) election. The person receiving a majority of the votes cast in the second (run-off) election shall be the Nominated Director Candidate for such District. If such second (run-off) election ends in a tie, then a lottery (name drawn from a hat) from the persons whose vote ended in a tie shall determine the Director Candidate.

The minutes of such District Meeting shall set forth, among other matters, the name of each person nominated at the meeting and the number of votes received by each, and shall specify the Nominated Director Candidate of the District. A copy of the minutes, signed and certified by the Chairman and Secretary of the District Meeting, shall be delivered to the Secretary of the Cooperative within ten (10) days after such District Meeting. No informality or defect in such minutes or in the proceedings shall void the nominations so made, or affect the validity of the election of the Director Candidate, or affect the validity of the election of Directors at a meeting of the Members of the Cooperative.

- (b) **Member Petition.** Nominations for official Director Candidates may be made by submitting a written petition. A petition shall be considered valid only if:
- (i) it designates, on each page of the petition, the full name of the nominee;
 - (ii) it designates, on each page of the petition, the voting District for which the nomination is made;
 - (iii) it contains original dated signatures of one hundred (100) current Cooperative Members of that voting District. If spouses hold a Joint Membership, they jointly shall be entitled to only one (1) signature;
 - (iv) it contains, next to each Member's signature, the Member's printed name and mailing address of where the Member receives the Cooperative's electric bill;
 - (v) at least the number of signatures required from Section 5(b)(iii) shall be dated no earlier than the day following the District Meeting nor later than thirty (30) days after the date of the District Meeting for which the nomination is made;

- (vi) the petition is submitted to the headquarters office of the Cooperative by no later than 5:00 p.m. on the thirtieth (30) day after the date of the District Meeting for which the nomination is made.

Not less than fifty (50) days before any meeting at which Directors are to be elected, the Cooperative's Nominating Committee, as set forth in Section 5(c), shall review each petition to determine whether or not the petition is valid.

If the Cooperative's Nominating Committee fails to act within the time allowed, the petition shall be treated as if it had been found valid, even if the petition fails to meet all requirements as stated in Section 5(b).

- (c) **Nominating Committee.** The Cooperative's Nominating Committee shall consist of the Cooperative's Board, exclusive of any Director whose District is up for election. The Nominating Committee may nominate one Director Candidate for each District in which Director elections are to be held.

The Cooperative's Nominating Committee shall also validate all submitted Member petitions for Director Candidacy appropriate to the submission of a Member petition as set forth in Section 5(b).

- (d) **Nominating Committee Meeting.** Not less than fifty (50) days before any meeting at which Directors are to be elected, the Nominating Committee may meet at a suitable place to be designated by the Board. The Nominating Committee may select one Director Candidate, otherwise eligible under these Bylaws, for each District in which a Director election will be held. Any Nominating Committee member may make nominations for Director for any District up for election. Director Candidates selected shall be by majority vote of the Nominating Committee. If only one (1) person is nominated and receives the vote of a majority of the Members present and voting, then such person shall be the Nominated Director Candidate for such District. If such one (1) person fails to receive a majority vote, then the meeting shall be open for further nominations. If more than one (1) person is nominated, then the person receiving a majority of the votes cast shall be a Director Candidate for such District. If more than two (2) persons are nominated and no one person receives a majority of the votes cast, then the two (2) persons receiving the highest number of votes shall participate in a second (run-off) election. The person receiving a majority of the votes cast in the second (run-off) election shall be a Director Candidate for such District. If such second (run-off) election ends in a tie, then a lottery (name drawn from a hat) from the persons whose vote ended in a tie shall determine the Director Candidate.

A copy of a certificate stating the names of each Director Candidate selected by the Nominating Committee shall be executed by each member of the Nominating Committee and delivered to the Secretary of the Cooperative within ten (10) days after such Nominating Committee meeting. No informality or defect in such certification or in the proceedings shall void the selection of a Director Candidate made by the Nominating Committee or affect the validity of the election of Directors at a meeting of the Members of the Cooperative.

- (e) Notwithstanding any provision of Article III, Section 5 to the contrary, if nominations of Directors do not occur within the time periods specified for nominations at District Meetings, by written petition and/or by Nominating Committee due to a Force Majeure Event as defined in Article II, Section 1 of these Bylaws, such nominations can be:
 - (i) postponed to a date determined by the Board of Directors to be as soon as reasonably practicable after removal of the cause, or
 - (ii) made by the Nominating Committee.

A meeting of the Nominating Committee as provided in this paragraph (e) may be conducted by using a conference telephone or similar communications equipment, or another suitable Electronic communications system, including videoconferencing technology, the internet or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, the entity must: (1) implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified; and (2) keep a record of any vote or other action taken.

Section 6. Election of Directors

- (a) Voting for Directors. Not more than forty-nine (49) days before an Annual or a Special Meeting of the Members at which Directors are to be elected, the Secretary of the Cooperative shall mail or send Electronically a Proxy Card as described in Article II [Meetings of Members], Section 6(d) of these Bylaws, or ballot to each Member. This Proxy Card may be included with the notice of the meeting. At the meeting, the Chairman or Secretary of the meeting shall inform the Members of the Director Candidates nominated at the District Meeting, by Member petition and by the Nominating Committee for each District from which Directors are to be elected. Election of Directors from any District for which more than one (1) person has been nominated shall be by written ballot. Where only one (1) person has been nominated for Director from any District, voting may be by a show of hands or by voice vote without balloting, and the Chairman may announce that the nominated individual is elected by acclamation and no vote is required. Where more than one (1) person has been nominated for Director from any District, the name of the candidates shall be printed on the ballot. Each Member of the Cooperative present or represented by

proxy shall be entitled to vote for one (1) candidate from each District from which Directors are to be elected. The candidate from each District from which a Director is to be elected receiving the highest number of votes at this meeting shall be declared Director.

- (b) **Counting Ballots.** At each meeting of the Members of the Cooperative at which Directors are to be elected, or at which any other matter is voted on by written or printed ballot, an Election Committee, whose duty it shall be to collect and count the ballots and report the results to the meeting, shall be appointed.

Such Election Committee shall consist of eleven (11) members, one (1) to be selected by each Director. Following the collection of ballots, the committee shall proceed to a suitable location for counting ballots and immediately elect a chairman from among their number. The chairman shall then divide the remaining members of the committee into three (3) groups, with two (2) groups containing three (3) committee members and one (1) group containing four (4) committee members. All groups shall remain in the same room. Each group shall designate one (1) member to run a tally sheet, with the remaining members to act as ballot judges. employees of the Cooperative, appointed by the General Manager in accordance with their qualifications, may be used to assist the groups with the tally sheets by running a second tally sheet and other duties as the Chairman may require. The Chairman of the Election Committee shall supervise the counting of the ballots by each group, and, in case of a tie in decision by the judges of each group, the Chairman shall rule on such tie decision. Upon completion of the ballot counting, the Election Committee shall return to the Membership Meeting. The Election Committee Chairman shall present a certified copy of the report of the Election Committee to the Secretary of the Cooperative. The Election Committee Chairman shall then read said report to the Members present at the meeting. A copy of this procedure shall be furnished to each member of the Election Committee upon his/her appointment at the Membership Meeting.

Section 7. Removal of Directors

- (a) **Removal by the Members.** Any Member may bring charges against a Director by filing them in writing with the Secretary, together with a petition signed by ten percent (10%) of the Members within sixty (60) days prior to the date of the petition, requesting the removal of the Director in question; such petition shall state the cause for removal of the Director provided, however, that only one (1) Director may be removed in any 12-month period. For purposes of the removal of a Director, "cause" shall mean
 - (i) the failure of a Director to perform his or her obligations and duties hereunder to the reasonable satisfaction of the Cooperative, which failure is not remedied within 30 days after receipt of written notice from the Cooperative;

- (ii) the commission by a Director of an act of fraud upon, or willful misconduct toward, the Cooperative or any of its affiliates;
- (iii) the conviction of the Director of any felony (or a plea of nolo contendere thereto) or any crime involving moral turpitude; or
- (iv) the failure of the Director to carry out, or comply with, in any material respect any directive of the Board consistent with the terms of these Bylaws, which is not remedied within thirty (30) days after receipt of written notice from the Board or the Cooperative.

Any written notice from the Board or the Cooperative pursuant to this Section 7 shall specifically identify the failure that it deems to constitute cause.

- (i) If the Board determines that the petition complies with paragraph (a), and only if the Secretary certifies the authenticity of the petition, a meeting of the Members shall be noticed in accordance with these Bylaws and shall be held within sixty (60) days after receipt by the Cooperative of the written petition. The removal shall be by the affirmative vote of two-thirds $\frac{2}{3}$ of the Members present in person or by proxy at the next regular or special meeting of the Members following filing of the petition and any vacancy created by such removal shall be filled in accordance with Article III [Directors], Section 8 of these Bylaws.
 - (ii) The Director against whom such charges have been brought shall be informed in writing of the charges prior to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present evidence; and the person or persons bringing the charges against the Director shall have the same opportunity.
- (b) **Removal by the Board of Directors.** The Board of Directors may remove a Director for cause only as provided in this section. "Cause" for removal by the Board of Directors shall mean that the Director has failed to comply with or meet any of the Director Qualifications set forth in the Bylaws; has violated applicable policies of the Cooperative; or is legally incapacitated; provided, however, that the determination to remove a Director is made by the vote of two-thirds ($\frac{2}{3}$) of the Directors who meet all of the required qualifications. No Director shall be removed by the Board of Directors except upon completion of the procedures required under Article III, Section 4 of these Bylaws for Director Disqualification.

Section 8. Vacancies

Vacancies occurring in the Board shall be filled by a majority vote of the remaining Directors, and Directors thus appointed shall serve until their successors shall have been elected and shall have qualified. The Member appointed as Director to fill the vacancy must meet the same qualifications as set out in Article III [Directors], Section 3 of these Bylaws.

Section 9. Compensation

Directors shall not receive any salary for their services as such, except that by resolution of the Board, the Cooperative may pay certain benefits for Cooperative Board members, including, but not limited to, medical insurance premiums, 24-hour accident insurance premiums, business travel insurance premiums, life insurance premiums and other similar benefits. In addition, by resolution of the Board, Directors may be allowed and paid a fixed amount for each day or a portion thereof spent on Cooperative business, and the expenses for attendance at each meeting of the Board or any meeting of any other organization of which the Cooperative is a Member or in which it has an interest, or at any meeting or session of any other organization, board, commission, court, or other body or agency considering a matter of interest to the Cooperative, or at any other meeting deemed necessary, advisable, or in the best interest of the Cooperative, or while attending to the business or affairs of the Cooperative in their capacities as Directors. Except in emergencies, no Director shall receive compensation for serving the Cooperative in any other capacity, nor shall a Close Relative of a Director receive compensation for serving the Cooperative, unless such compensation shall be specifically authorized by a vote of a majority of the Board, exclusive of the vote of the related Director.

Section 10. Policies, Rules and Regulations

The Board shall have power to make and adopt such policies, rules and regulations, not inconsistent with law, the Certificate of Formation, or these Bylaws, as it may deem advisable for the management, administration and regulation of the business and affairs of the Cooperative.

Section 11. Accounting System and Reports

The Board shall cause to be established and maintained a complete accounting system which, among other things, subject to applicable laws and rules and regulations of any regulatory body, shall conform to Generally Accepted Accounting Principles. The Board shall also after the close of each fiscal year cause to be made a full and complete audit of the accounts, books and financial condition of the Cooperative as of the end of such fiscal year.

Section 12. Executive Committee

The Board may designate from among its members an Executive Committee consisting of the President, Vice President, Secretary and Treasurer of its Board, and an additional Director appointed by the Board. The Board may delegate to its Executive Committee policy decisions in emergency situations, preparation of reports, recommendations on such matters as the Board may direct, and such other and further duties and authorities as the Board may from time to time impose on it or delegate to it. The designation of such committee and the delegation thereto of authority shall not operate to relieve the Board, or any member thereof, of any responsibility imposed upon it or him/her by law. Any member of such Executive Committee may be removed, for or without cause, by the Board. If any vacancy or vacancies occur in the Executive Committee caused by death, resignation,

retirement, disqualification, removal from office or otherwise, the vacancy or vacancies shall be filled by the Board.

Section 13. Director Resignation

A Director may resign at any time by giving written notice of resignation to the President or the Secretary. The resignation shall be effective when given unless the notice of resignation specifies a later date. If a resignation has a delayed effective date, the vacancy resulting from the resignation may be filled in accordance with Article III, Section 8 of these Bylaws so long as the successor does not become a Director until the effective date of the resignation.

Section 14. Restriction on Employment of Directors

No Person who is, or has served as, a Director of the Cooperative shall be eligible for employment with the Cooperative or any of its affiliates during the period of service as a Director and during the three (3) year period immediately thereafter.

Section 15. Limiting Liability of Directors

To the fullest extent permitted by law, a Director shall not be liable to the Cooperative or to its Members, for monetary damages for an act or omission in the Director’s capacity as a Director, except that this provision does not eliminate or limit the liability of a Director for:

- (a) a breach of the Director’s duty of loyalty to the Cooperative of its Members;
- (b) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law;
- (c) a transaction from which a Director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the Director’s office; or
- (d) an act or omission for which the liability of the Director is expressly provided for by statute.

ARTICLE IV (MEETINGS OF DIRECTORS)

Section 1. Regular Meetings

A regular meeting of the Board shall be held monthly at such time and place as designated by the Board. Such regular monthly meetings of the Board may be held without notice other than a resolution fixing the time and place thereof.

Section 2. Special Meetings

Special meetings of the Board may be called by the President or any three (3) Directors. The person or persons authorized to call special meetings of the Board

shall fix the time and place (which shall be in any county in the State of Texas) for the holding of any special meeting of the Board called by them.

Section 3. Notice

Notice of the time, place and purpose of any special meeting of the Board shall be given at least five (5) days prior thereto, by written notice, delivered personally or mailed, by regular or Electronic mail, to each Director at his/her last known address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. Except as otherwise provided in these Bylaws, an Electronically transmitted notice of a Directors Meeting is delivered when Electronically sent to a Director at the Director's Electronic mail address shown in the Cooperative's records. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except in case a Director shall attend a meeting for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

Section 4. Quorum

A majority of the Board shall constitute a quorum for the transaction of any business, except as provided in Article XV [Amendments] of these Bylaws, at any meeting of the Board; provided, that if less than a majority of the Directors are present at any meeting, a majority of the Directors present may adjourn the meeting from time to time, and provided further, that the Secretary shall notify any absent Directors of the time and place of such adjourned meeting. An interested Director may be counted in determining whether a quorum is present to vote or act upon a matter in which the Director is interested. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board, except as otherwise provided in these Bylaws. Any action that the Board has authority to take or cause to be taken under these Bylaws and the other Governing Documents shall be subject to the Board's sole discretion.

Section 5. Manner of Acting

Except as provided in Article XV [Amendments] of these Bylaws, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board. Notwithstanding the foregoing, a meeting of the Board may be conducted by using a conference telephone or similar communications equipment, or another suitable Electronic communications system, including videoconferencing technology or the internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, the entity must:

- (a) implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified; and

(b) keep a record of any vote or other action taken.

Section 6. Board Action by Written Consent

Except for any action under Article III, Section 7(b) of these Bylaws, the Board may take an action required or permitted to be taken at a Board meeting, without a Board meeting, if the action is:

(a) taken by all Directors; and

(b) evidenced by one or more written consents ("Director Written Consent"):

- (i) describing the action taken;
- (ii) signed by each Director; and
- (iii) included with the Board meeting minutes.

Except as a different effective date is stated or provided in the Director Written Consent, action taken by Director Written Consent is effective when the last Director signs the Director Written Consent. A Director Written Consent may be signed in counterparts. A Director Written Consent has the effect of, and may be described as, a Board meeting vote.

Section 7. Members' Attendance at Board Meetings

The Board may promulgate or approve rules, policies, and procedures regarding attendance at, participation in, or presentation during Board Meetings by Persons other than Directors; the right to access, inspect, or copy minutes, records, or other documents relating to a Board Meeting by Persons other than Directors; or the conduct of Board Meetings.

ARTICLE V (OFFICERS)

Section 1. Number

The officers of the Cooperative shall be a President, Vice President, Secretary, Treasurer and such other officers as may be determined by the Board from time to time. The offices of Secretary and of Treasurer may be held by the same person.

Section 2. Election and Term of Office

The officers shall be elected by an affirmative vote of a majority of the Directors, by voice or by ballot annually by and from the Board at the first meeting of the Board held after each Annual meeting of the Members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. Each officer shall hold office until the first meeting of the Board following the next succeeding Annual meeting of the Members or until his/her successor shall have been duly elected and shall have qualified, subject to the provisions of these Bylaws with respect to the removal of officers.

Section 3. Removal or Resignation of Officers and Agents

Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Cooperative will be served thereby. In addition, any Board officer or Cooperative officer may resign from office at any time by giving written notice of resignation to the Board. The removal or resignation from office of or by any Board officer shall not necessarily affect such Director's continued service as a Director, but a Director who is removed or resigns as Director in accordance with these Bylaws shall cease to be a Board officer upon his or her removal or resignation.

Section 4. Vacancies

Except as otherwise provided in these Bylaws, a vacancy in any office may be filled by the Board for the unexpired portion of the term of such office.

Section 5. President

The President shall:

- (a) unless otherwise determined by the Directors, preside at all meetings of the Board,
- (b) sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed or executed; and,
- (c) in general, perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

Section 6. Vice President

In the absence of the President, or in the event of his/her inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President, and shall perform such other duties as from time to time may be assigned to the Vice President by the Board.

Section 7. Secretary

The Secretary shall:

- (a) see that the minutes of meetings of the Members and of the Board are properly maintained;
- (b) see that all notices are duly given in accordance with these Bylaws or as required by law;

- (c) be custodian of the corporate records and of the seal of the Cooperative and see that the seal of the Cooperative is affixed to all documents, the execution of which on behalf of the Cooperative under its seal is duly authorized in accordance with the provisions of these Bylaws;
- (d) keep a register of the names and mailing addresses of all Members;
- (e) keep on file at all times a complete copy of the Articles and the Bylaws of the Cooperative containing all amendments thereto (which copy shall always be open to the inspection of any Member) and at the expense of the Cooperative, furnish a copy of the Bylaws and of all amendments thereto to any Member upon request; and
- (f) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Board.

The duties necessary to meet the Secretary's responsibilities may be delegated to Cooperative staff.

Section 8. Treasurer

The Treasurer shall:

- (a) be responsible for all funds and securities of the Cooperative; and,
- (b) in general, perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the Board.

The duties necessary to meet the Treasurer's responsibilities may be delegated to Cooperative staff.

Section 9. Other Cooperative Representatives

The Board may appoint other officers, agents and employees of the Cooperative, and authorized designees of the Board may appoint such other agents and employees of the Cooperative, as the Board or its designees (as the case may be) consider necessary. Such other officers, agents and employees may be given such titles as determined by the Board or its designees.

Section 10. Bonds of Officers

The Treasurer and any other officer or agent of the Cooperative charged with responsibility for the custody of any of its funds or property may be bonded in such sum and with such surety as the Board shall determine. The Board, in its discretion, may also require any other officer, agent or employee of the Cooperative to be bonded in such amount and with such surety as it shall determine.

Section 11. General Manager

The Board may appoint a General Manager who shall be the Chief Executive Officer of the Cooperative, and who may be, but who shall not be required to be, a Member of the Cooperative. The General Manager shall perform such duties as the Board may from time to time require of the General Manager and shall have such authority as the Board may from time to time vest in the General Manager.

Section 12. Compensation

The compensation of the General Manager of the Cooperative shall be determined by a vote of a majority of the Board.

Section 13. Reports

The officers of the Cooperative shall submit at each Annual Meeting of the Members, reports covering the business of the Cooperative for the previous fiscal year showing the condition of the Cooperative at the close of such fiscal year.

ARTICLE VI (FINANCIAL TRANSACTIONS)

Section 1. Contracts

Except as otherwise provided in these Bylaws, the Board may authorize any officer or officers, agent or agents, employee or employees to enter any contract or execute and deliver any instrument in the name and on behalf of the Cooperative, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, Etc.

All checks, drafts or other orders for payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the Cooperative shall be signed by such officer or officers, agent or agents, employee or employees of the Cooperative and in such manner as shall from time to time be determined by resolution of the Board.

Section 3. Deposits

All funds of the Cooperative shall be deposited from time to time to the credit of the Cooperative in such financial institution or institutions as the Board may select.

ARTICLE VII (MEMBERSHIP CERTIFICATES)

Membership in the Cooperative may be evidenced by a certificate of membership which shall be in such form and shall contain such provisions as shall be determined by the Board not contrary to or inconsistent with the Certificate of Formation or these Bylaws. The membership agreement or applicable electric service agreement, along with the membership number assigned by the Cooperative to such member, shall constitute the membership certificate for purposes of these bylaws.

ARTICLE VIII (NONPROFIT OPERATION)

Section 1. Nonprofit and Cooperative Operation

The Cooperative: (1) shall operate on a nonprofit and cooperative basis for the mutual benefit of all Members; and (2) shall not pay interest or dividends on capital furnished by Patrons (defined in Section 2(a) below).

Section 2. Allocating Capital Credits

The Cooperative shall allocate Capital Credits as provided in this Section. The Cooperative must allocate Capital Credits in a Patron's name as shown in the Cooperative's records, regardless of the Patron's marital status.

- (a) **Patron.** The term "Patron" means, during a fiscal year:
 - (i) a Member; and
 - (ii) any other Person using a Cooperative Service.
- (b) **Entity Patron.** The term "Entity Patron" means any Patron that is a distinct legal entity or non-natural person, such as a corporation, partnership, organization, or association.
- (c) **Cooperative Service.** The term "Cooperative Service" means the provision of electric service (electric energy and/or services). Such term shall also include the provision of other utility type goods and services to the extent the provision of such goods and services would qualify an organization for exemption from federal income taxation under Section 501(c)(12) of the Internal Revenue Code and for which the Cooperative has a legal obligation to provide such goods and services on a patronage basis through the allocation of Capital Credits. Notwithstanding any provision of these Bylaws to the contrary, Cooperative Service does not include any good or service provided by an affiliate of the Cooperative to its customers.
- (d) **Allocating Earnings.** For each Cooperative Service provided during a fiscal year, the Cooperative shall equitably allocate to each Patron, in proportion to the Patronage, (which is the quantity or value of the Cooperative Service used by the Patron during the fiscal year and timely paid for by the Patron,) the Cooperative's Patronage Earnings. "Patronage Earnings" means the amount by which the Cooperative's patronage sourced revenues, income and gains from and directly related to providing a Cooperative Service exceed the Cooperative's patronage sourced expenses and losses of providing the Cooperative Service, all as determined under federal cooperative tax law.

Provided, however, for each Cooperative Service, if costs and expenses exceed the amounts received and receivable from and directly related to providing such Cooperative Service, hereinafter referred to as "Patronage Loss," then the Board of Directors shall have the authority, under accepted accounting

practices, loan covenants and federal cooperative tax law, to prescribe the accounting procedures under which such operating loss may be addressed.

For each fiscal year, the Cooperative may, as determined by the Board, use, retain or equitably allocate the Cooperative's Nonpatronage Earnings. "Nonpatronage Earnings" means revenue, income and gains in excess of expenses and losses from the provision of a good or service not provided to the Patrons on a patronage basis, including earnings or losses from a subsidiary corporation. Such Nonpatronage Earnings may be used to offset an operating loss as determined by the Board.

- (e) **Capital Credits.** For each Patronage Earnings amount allocated to a Patron, the Patron shall be deemed to have contributed such amount to the Cooperative as capital. The Cooperative must credit all capital contributions from a Patron to a capital account for the Patron. The Cooperative shall maintain books and records reflecting the capital contributed by each Patron. At the time of receipt by the Cooperative, each capital contribution is treated as though the Cooperative paid the Patronage Earnings amount allocated to the Patron in cash and the Patron contributed the corresponding amount to the Cooperative as capital. The term "Capital Credits" means the amounts allocated to a Patron and contributed by the Patron to the Cooperative as capital.

To secure a Patron's obligation to pay amounts owed to the Cooperative, including any compounded interest and late payment fee, and in return for the Cooperative providing a Cooperative Service to the Patron, the Cooperative has, and by accepting service, each Patron hereby grants to the Cooperative, a security interest in Capital Credits allocated to the Patron. The Patron authorizes the Cooperative to perfect this security interest by filing a financing statement.

- (f) **Method of Allocation.** Notwithstanding other provisions of this Bylaw, the Board, acting through policy, has the authority to
- (i) determine the process for annually calculating the amount of Patronage Earnings and Patronage Losses; and
 - (ii) determine the kind, timing, method and type of allocation; provided however, that such methods are fair and equitable on the basis of Patronage. Such policies apply separately to each Cooperative Service and includes, but is not limited to, the authority to determine the items of revenue included in the definition of Patronage.

As reasonable and fair, the Cooperative may allocate Patronage Earnings to different classes of similarly situated Patrons under different manners, methods, and timing, provided the Cooperative allocates Patronage Earnings to similarly situated Patrons under the

same manner, method and timing. If the Cooperative is a member, patron or owner of an entity from which the Cooperative uses a good or service in providing a Cooperative Service and from which the Cooperative is allocated Patronage Earnings or similar amount, then, as determined by the Board and consistent with this Bylaw, the Cooperative may separately identify and allocate to the Cooperative's Patrons this Capital Credit or similar amount allocated by the entity.

- (g) **Notification of Allocation.** Within a reasonable time after the end of each fiscal year, the Cooperative shall notify all Patrons, through general publication or similar method of communication, of the aggregate amount of Capital Credits allocated to the Capital Accounts of all Patrons, and upon request, the Cooperative shall inform an individual Patron of the specific amount of capital credited to the Patron's capital account.
- (h) **Joint Memberships.** Upon the death of a Joint Member, the Cooperative shall assign and transfer to the surviving Joint Member an equal portion of Capital Credits allocated, or to be allocated, to the surviving Member; or upon the death of both Members of a Joint Membership, the membership will terminate and the balance in the capital account will be subject to the Special Retirement provisions of Article VIII [Non-Profit Operation], Section 4(b) of these Bylaws.

Section 3. Assignment of Capital Credits

Subject to the right of offset for any amounts owed the Cooperative, Capital Credits of a Patron or former Patron are assignable only on the books and records of the Cooperative. Except as otherwise provided by the Board or these Bylaws, in order for a Patron to assign or transfer a Patron's Capital Credits:

- (a) the Cooperative must receive a written or Electronic request signed by the Patron to assign or transfer the Capital Credits;
- (b) the Patron and the assignee or transferee must comply with all reasonable requirements specified by the Cooperative; and
- (c) the Board shall have the right to approve or deny the assignment or transfer in its sole discretion.

Section 4. Retiring Capital Credits

The Cooperative may retire and pay Capital Credits allocated to Patrons and former Patrons as provided in these Bylaws. If the Cooperative retires and pays Capital Credits, then the Cooperative must retire and pay Capital Credits in a Patron's name as shown in the Cooperative's records, regardless of the Patron's marital status. If the Cooperative mails a retired Capital Credit payment, then the Cooperative shall mail the payment to the Patron or former Patron's address as

shown in the Cooperative's records. The Patron's capital account shall reflect and be reduced by the amount of such retirement.

- (a) **General Capital Credit Retirements.** At any time before the Cooperative's dissolution, liquidation or other cessation of existence, the Cooperative may generally retire and pay some or all Capital Credits allocated to Patrons and former Patrons.
- (b) **Special Capital Credit Retirements.** The Cooperative may specially retire and pay some or all Capital Credits allocated to an individual Patron or former Patron in accordance with Section 4(d) of this Article VIII:
 - (i) after the death of the individual;
 - (ii) after receiving a written or Electronic request from the deceased individual's heir or authorized representative; and according to the terms and conditions established by the Cooperative. The Cooperative may not specially retire and pay Capital Credits allocated to an Entity Patron or former Entity Patron
 - during or after the entity's dissolution, liquidation or other cessation of existence; or
 - during or after the entity's reorganization, transfer, merger, or consolidation.
- (c) **Capital Credit Recoupment and Offset.** The Cooperative may recoup, offset, or setoff an amount owed to the Cooperative by the Patron or former Patron, including any compounded interest and late payment fee, by reducing the amount of retired Capital Credits paid to the Patron or former Patron by the amount owed to the Cooperative.
- (d) **Capital Credit Retirement Discretion.** The Cooperative may retire and pay Capital Credits only if the Board determines that the retirement and payment will not adversely impact the Cooperative's financial condition. Consistent with this Bylaw, the retirement and payment of Capital Credits are in the sole discretion of the Board and are not affected by previous retirements and payments. The manner, method, order and timing of retiring and paying Capital Credits may be determined only by the Board.

Pursuant to such discretion, the Board shall also have the power, exercisable in its sole discretion to retire all or a portion of Capital Credits of Patrons prior to the time such capital would otherwise be retired under the provisions of these Bylaws or the policies of the Board, but only if the financial condition of the Cooperative will not be impaired. The payment portion of such early retirement may be on a discounted and net present value basis in order to reflect the time value of money. Such policies shall establish the criteria used in determining the discounted and net present value of early retirements. The discount, which is the difference between

the total of Capital Credits retired and the cash payment of such early retirement, shall be deemed a contribution of capital to and part of the net savings of the Cooperative. Subject to Board action that legally binds the Cooperative to maintain records of the discount by Patron or former Patron, the discount shall be a form of retained but allocated capital for purposes of distributing the cumulative amount of all such discounts to the respective Patron or former Patron upon dissolution and liquidation of the Cooperative.

- (e) **Different and Separate Capital Credit Retirements.** As reasonable and fair, the Cooperative may retire and pay Capital Credits to separately established classes of similarly situated Patrons and former Patrons under different manners, methods, and timing, provided the Cooperative retires and pays Capital Credits to such separately established similarly situated Patrons and former Patrons under the same manner, method, and timing. If the Cooperative separately identified and allocated Capital Credits representing Capital Credits or similar amounts allocated to the Cooperative by an entity in which the Cooperative is or was a member, patron or owner, then the Cooperative may retire and pay these Capital Credits only after the entity retires and pays the Capital Credits or similar amounts to the Cooperative.

Section 5. Patron Agreement

Each Patron and former Patron agrees that:

- (a) Capital Credits are not securities under state or federal law;
- (b) The Patron's right to Capital Credits becomes payable only upon the Cooperative retiring the Capital Credits as provided in these Bylaws, and not upon the Cooperative allocating the Capital Credits; and
- (c) As required by law, each Patron will:
 - (i) report to the appropriate entity all allocated or retired Capital Credits; and
 - (ii) pay the appropriate entity any tax or similar amount on allocated or retired Capital Credits.

To the extent that the Cooperative is required to make any tax withholding amounts from the retirement or payment of such Capital Credits, the Patron acknowledges and agrees to such withholding.

Section 6. Non-Member Patrons and Non-Patrons

As a condition of using a Cooperative Service, and except as otherwise provided by the Board:

- (a) To the same extent as a Member, a Patron who is not a Member (“Non-Member Patron”) and a Person Using a Cooperative Service who is not a Member or Patron (“Non-Patron”) must abide by and be bound to the duties, obligations, liabilities and responsibilities imposed by the Governing Documents upon Members;
- (b) A Non-Member Patron or Non-Member former Patron has none of the rights granted by the Governing Documents to Members, other than the rights to:
 - (i) be allocated Capital Credits; and
 - (ii) be paid retired Capital Credits; and
- (c) A Non-Patron or former Non-Patron has none of the rights granted by the Governing Documents to Members.

ARTICLE IX (ELECTRONIC DOCUMENTS AND ACTIONS)

- (a) As used in these Bylaws, subject to the context requiring otherwise, and as determined by the Board:
 - (i) “Electronic” and “Electronically” mean relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;
 - (ii) to sign an Electronic Document means, with present intent to authenticate or adopt the Electronic Document, to attach to, or logically associate with, the Electronic Document an Electronic sound, symbol or process; and
 - (iii) Electronic transmission includes transmission through:
 - Electronic mail;
 - the Cooperative’s website; or
 - a website or information processing system that the Cooperative has designated or uses to send, receive, or transmit Electronic Documents or Electronic information, or to Electronically conduct an action, transaction, business, meeting or activity.
- (b) If a Member or Director owns, controls, or has reasonable access to the applicable or necessary hardware and software, then, the Member or Director may choose to transact certain business with the Cooperative in an Electronic format. In such event:
 - (i) the Member or Director consents and agrees to:
 - use, accept, send, receive, and transmit an Electronic signature, contract, record, notice, vote, communication, comment, and other document regarding an action, transaction, business, meeting, or activity with, for, or involving the Cooperative (“Electronic Document”);

- Electronically conduct an action, transaction, business, meeting, or activity with, for, or involving the Cooperative; and
 - Electronically give or confirm this consent and agreement;
- (ii) an Electronic Document sent or transmitted to, or received or transmitted from, the Member or Director satisfies a requirement imposed by the Governing Documents that the underlying signature, contract, record, notice, vote, communication, comment or other document be in writing;
 - (iii) Electronically sending or transmitting an Electronic Document to, or receiving or transmitting an Electronic Document from, the Member or Director satisfies a requirement imposed by the Governing Documents that the underlying signature, contract, record, notice, vote, communication, comment, or other document be sent or received personally or by mail; and
 - (iv) the Member or Director Electronically taking an action provided in these Bylaws satisfies a requirement imposed by the Governing Documents regarding the form or manner of taking the action.

Except as otherwise provided in these Bylaws, an Electronic Document Electronically sent or transmitted to a Member or Director or former Member at the Member or Director or former Member's last known Electronic address is considered sent, received, transmitted, and effective on the date sent by the Cooperative. An Electronic Document Electronically received or transmitted from a Member or Director or former Member is considered sent, received, transmitted, and effective on the date received by the Cooperative.

ARTICLE X (WAIVER OF NOTICE)

Any Member or Director may waive, in writing, any notice of meetings required to be given by these Bylaws, and such waiver may be before or after the meeting. The attendance of a Member or Director at any meeting shall constitute a waiver of notice of such meeting by such Member or Director, except in case a Member or Director shall attend a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

ARTICLE XI (DISPOSITION OF PROPERTY)

The Cooperative may not sell, lease or otherwise dispose of any of its property other than:

- (a) property which, in the opinion of the Board, neither is nor will be necessary or useful in operating or maintaining the Cooperative's system or facilities;

- (b) property which may be necessary or useful in the operation or maintenance of the Cooperative's system or facilities but which in the judgment of the Board, is in the best interest of the Cooperative, should be sold, disposed of, leased or encumbered; provided, however, that all sales of such property shall not in any one year exceed in value ten percent (10%) of the value of all the property, plant and equipment of the Cooperative;
- (c) Services of all kinds permitted by law, including, but not limited to, electric energy; and
- (d) Personal property acquired for resale;

unless, such sale, lease or other disposition is authorized by an affirmative vote of a majority of the Members present at a meeting of the Members, at which at least one-half of the total membership of the Cooperative are present in person or by proxy, and notice of the proposed sale, lease or other disposition shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, the Board, without authorization by the Members, shall have full power and authority to borrow money from the United States of America, or any agency or instrumentality thereof, or from any bank, person, firm, or corporation whatsoever, and in connection with such borrowing to authorize the making and issuance of bonds, notes, or other evidences of indebtedness and, to secure the payment thereof, to authorize the execution and delivery of a mortgage or mortgages, or a deed or deeds of trust upon, or a security interest in, or the pledging or encumbering of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the Cooperative, wherever situated, and whether acquired or to be acquired, and wherever situated, all upon such terms and conditions as the Board shall determine.

ARTICLE XII (FISCAL YEAR)

The Board may determine and modify the Cooperative's fiscal year. The fiscal year of the Cooperative shall begin on the first of January of each year and end on the thirty-first day of December of the same year.

ARTICLE XIII (MEMBERSHIP IN OTHER ORGANIZATIONS)

The Cooperative may become a member of, or purchase stock in any other organization upon the authorization of a majority of the Board present at a meeting at which a quorum is present.

ARTICLE XIV (SEAL)

The corporate seal of the Cooperative shall be in the form of a circle and shall have inscribed thereon the name of the Cooperative and the words "Corporate Seal, Texas."

ARTICLE XV (AMENDMENTS)

The Bylaws of the Cooperative may be altered, amended or repealed by the affirmative vote of not less than two-thirds (2/3) of the Directors at any regular or special meeting.



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